CF0000062609

(2)

IN THE HIGH COURT OF JUDICATURE OF MADHYA PRADESH

AT JABALPUR

Criminal Appeal No. 463 /1999

Division Bench (Criminal)

(2708)

15/2/99

D. Choudhary

Advocate

1. Puniram Satnami, son of
Bhondal Satnami, aged about
30 years, resident of Moudhpar,
Police Station: Bilaigarh,
Dist. Raipur (M.P.)

2. Bhondal Satnami, son of
Darshu Satnami, aged 48 years,
resident of Moudhpar,
Police Station: Bilaigarh,
Dist. Raipur (M.P.)

.. .. APPELLANTS
(IN JAIL)

Petition With Annexures

CLERK
O/o. Advocate General
M. P. JABALPUR

V E R S U S

State of Madhya Pradesh,
Through: Police Station
Bilaigarh, Dist. Raipur

.. .. RESPONDENT

APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973

XI-HC-78

(1174)
(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.No...463/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH
HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

6-4-2006:-

Shri Manoj Paranjpe with Shri Saurabh Dangi and Shri V.A. Goverdhan, counsel for the appellants.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri D.K. Gwalre, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais*.

PER L.C. BHADOO, J.

By this appeal, the accused/appellants have questioned the legality and correctness of the judgment of conviction and order of sentence dated 8-2-99 passed by the 2nd Additional Sessions Judge, Baloda Bazar, in S.T. No.427/92 whereby learned Additional Sessions Judge after holding the accused/appellants guilty under Section 302 of the I.P.C. for commission of murder of Lalaram Satnami, sentenced each of the accused/appellants to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo 2 years S.I..

The case of the prosecution, in brief, necessary for the disposal of this appeal is that complainant Suritram is the resident of village Mudpar. They are four brothers namely Suritram, Lalaram, Bhondal, and Anjor Singh. They are residing separately. The landed property was already partitioned and even mutated in the name of each of the brothers. Deceased Lalaram Satnami, younger brother of the complainant, sold his share of land to other accused namely Bhondal, but no sale deed was executed and accused Bhondal also paid consideration amount. But, thereafter, deceased Lalaram Satnami started saying that he has not sold his land. Even on being

(115)
(111)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

persuaded by Shivnarayan, he did not agree and on account of that there was animosity among the brothers i.e. accused Bhondal and deceased Lalaram Satnami. In that connection, some proceedings were also pending in the Tehsil Bilaigarh. On 25-8-92, deceased Lalaram Satnami and accused Bhondal went to attend the Court proceedings and they returned at about 5 p.m. in the evening. The complainant came to know through Mulchand that deceased Lalaram Satnami and accused Bhondal were assaulting each other with Lathi. He reached near the school and saw that Lalaram Satnami was lying on the ground, Bhondal Satnami and Puniram were assaulting him with Lathi and axe. Lalaram Satnami was assaulted with axe on the forehead. From the injuries, blood was oozing out. The injuries were on the calf region of the left leg and other parts of the body. Accused Puniram also assaulted mother of the complainant with Lathi.

The report (Ex.-P/20) of the matter was lodged by the complainant and the case was registered by Station House Officer. He left for the scene of occurrence, after giving notice Ex.-P/1 to the Panchas, prepared Panchanama Ex.-P/2 of the dead body of the deceased. He took into possession plain soil and blood stained soil from the place of occurrence under Ex.-P/3. Accused Puniram gave a memorandum Ex.-P/4 regarding Lathi and in pursuance of that Lathi was taken into possession under Ex.-P/8. The clothes of accused Puniram were taken into possession under Ex.-P/7. While in the police custody, accused Bhondal gave a memorandum Ex.-P/5 regarding axe and Lathi and in pursuance of that he got recovered the axe under Ex.-P/9. The clothes of accused Bhondal were taken into possession under Ex.-P/6. The lathi was taken into possession under Ex-P/10. The recovered articles were sent for chemical examination to the

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Forensic Science Laboratory, Raipur under Ex.-P/17 from where report Ex.-P/23 was received.

The postmortem on the dead body of the deceased was conduced by Dr. C.S. Patel (PW-13) and he prepared the postmortem report Ex.-P/18. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Baloda Bazar who in turn committed the case to the Sessions Judge, Raipur from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution examined 16 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution evidence. Learned Additional Sessions Judge after hearing counsel for the parties convicted and sentenced each of the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

The homicidal death of deceased Lalaram Satnami is not in dispute.

As far as involvement of the accused/appellants in committing murder of their own brother Lalaram Satnami is concerned, at the outset, learned counsel for the parties submitted that on account of death of eyewitnesses they could not be examined. Conviction rests on the recovery of weapons of offence i.e. Lathi and axe at the instance of the accused persons. They were found to be stained with blood as per the F.S.L. report Ex.-P/23.

As per the settled law, for resting conviction based on the circumstantial evidence the Court is required to ascertain from the circumstances regarding involvement of the accused in crime in question based on the following principles:-

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

1. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
2. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
3. the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

Assuming that recoveries of Lathi & axe were effected at the instance of accused Bhondal and Puniram, and even their clothes were found stained with blood, but merely on the basis of above circumstantial evidence based on the settled principles of law the accused persons cannot be connected with the crime in question for the reason that weapons of offence i.e. axe and Lathi which were recovered at the instance of the accused persons are normally found in each house on the village side, therefore, the heavy duty was on the shoulder of the prosecution that in order to connect the accused persons there should have been Serologist's report that blood which was found on the axe, Lathi and clothes of the accused persons was human blood, that too of the blood group of the deceased. But there is no Serologist's report to establish the above fact. Therefore, we are of the considered opinion that the prosecution has failed to bring on record the legal

[पीछे देखिये

(116)
(115)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and clinching circumstantial evidence through which the accused persons can be connected with crime in question.

For the foregoing reasons, finding of the trial Court convicting the accused persons for commission of murder of their own brother Lalaram and sentencing each of them to undergo imprisonment for life cannot be sustained.

In the result, the appeal is allowed. Conviction and sentence imposed on the accused/appellants under Section 302 of the I.P.C. are set aside and they are acquitted of the said charge. Accused Bhondal is in custody since 8-2-99. He is directed to be released forthwith, if not required in any other case. As accused Puniram is already on bail, therefore, his bail bonds are discharged.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Barve

13.4.06 22.4.06 24.4.06

[पीछे देखिये